IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 703 of 1989

With

SPECIAL CIVIL APPLICATION NO. 3025 of 1989

With

SPECIAL CIVIL APPLICATION No 2307 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTILAL N SANGANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 703 of 1989
   MR MD RANA for Petitioner
   Mr. D.P.Joshi, ASSTT. GOVERNMENT PLEADER
   for Respondent No. 1
   MR PM RAVAL for Respondent No. 2

2. Special Civil Application No. 3025 of 1989

Mr. M.D.Rana for the petitioner
Mr. D.P.Joshi, ASSTT. GOVERNMENT PLEADER
for respondent no.1.1

2. Special Civil ApplicationNo 2307 of 1990
Mr. MD RANA for Petitioner
Mr. D.P.Joshi, ASSTT. GOVERNMENT PLEADER
for Respondent No. 1, 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 11/06/2001

ORAL JUDGEMENT

A common question arises for decision in all these three petitions, hence, they are being disposed of by this common judgment.

2. The petitioners were employed and entered during the Old State of Junagadh much before the integration of Junagadh took place with the State of Saurashtra on 20th January, 1949. The petitioners were governed by the Junagadh State Rules which rules were embodied in the Junagadh Account Code. Under the Rule, the relevant age of superannuation for the employees of the State was 60 years. This guarantee was continued even upon the formation of the State of Saurashtra upon the integration of different states of Kathiavad. The Saurashtra Government passed an ordinance and it was agreed under the covenant and Article 16 that the conditions will not be varied to the disadvantage. Thus, the Saurashtra Government recognised those conditions of the State of Junagadh. The Administration of Junagadh State was taken over by the Government of India and the Regional Commissioner, Western India and Gujarat State Region at Rajkot was deputed by the Government of India to take over the administration of the Junagadh State on their behalf. The Regional Commissioner thereupon entered Junagadh State on 9th November, 1947 and took over the administration of Junagadh State. A D.O. letter dated 21st May, 1948 was sent to the Collector concerned giving instructions regarding maintenance thereof. The Rulers of marginally noted States have signed the agreement of integration of their States with the domains of India, the Government of India have authorised the Government of Bombay to administer the territories as an integral part of the province and for maintenance of administration. It is also stated that

the covenant was entered into between the rulers on one side and the Government of India on the other side guaranteeing that the Government of India will abide by the articles and a guarantee was also given to the State employees about the continuity of the permanent members on the same terms and conditions which will not be less advantageous than those on which they were serving before the date on which the administration of their State was made over to the Raj Pramukh on the payment of reasonable compensation. Under the Junagadh Account Code, the age of superannuation of its servants was 60 years and that guarantee was to continue as 60 years age of superannuation of the Junagadh State employees. After the formation of the State of Saurashtra, the petitioners became the employees of the Saurashtra Government and upon transaction of power one State to another, the petitioners were ultimately superannauted under the Rules of the Gujarat State at the age of 58 years. Thus, they were retired from services without giving benefit of 60 years as was prevailing at the time of their induction in service. Even after the integration of Saurashtra State, the guarantee continued. The supplementary convenant which brought about the integration read with Article 16 of the main covenant expressly protected the conditions of service of the absorbed services and the protection was also recognised by the Saurashtra Ordinance no. 3 of 1949 read with ordinance no.1 of 1948. The proclamation providing the guarantee with the conditions of service could not be varied to the disadvantage of the covenenting State servants was also issued in that behalf on 20th January, 1949 which was the date of merger of the State into the State of Saurashtra. As such, the petitioners are also entitled to carry the gaurantee with them and they could not have been retired at the age of 58 years. Consequently, they are required to be given the benefit of Rules contained in Junagadh Account Code which prescribed the age of superannuation of 60 years. As such, the action of the authority retiring the petitioners is violative of Articles 14 and 16 of the Constitution of India. It was also submitted that one Shri Bhatt who was serving in the Forest Department had challenged the action of the authority superannuating him at the age of 58 years by way of filing a Regular Civil Suit before Civil Court(S.D.), Junagadh. The said suit was decreed in his favour on the ground that under Junagadh Account Code, the age of superannuation was 60 years. Therefore, he was directed to be continued with that guarantee and the action of the authority to retire at the age of 58 years was held to be bad. Being aggrieved by the said judgment and decree, the Government of Gujarat preferred First Appeal before District Court

which was dismissed. However, he was not given the benefit of arrears and the pension fixation which is required to be revised on the basis of the declaration. Therefore, he filed a writ petition before this Court claiming therein that he was entitled to pension and gratuity on the basis of the declaration given by the Court till the age of 60 years. This Court issued a writ of mandamus to the Government of Gujarat to grant the benefits. Thus, he was granted retiral benefits on that basis of the judgment of this Court. On the basis of the said judgment of this Court, the contention of the learned counsel for the petitioners is that the matter of the petitioners are exactly identical. Hence, they are also entitled for the benefits on the basis of the judgment passed by the Civil Court (S.D.), and District Court.

3. Heard the learned counsel for the parties. A similar matter has been decided by this Court(Coram: S.K.Keshote, J) vide judgment dated 20.1.2001 disposing of Special Civil Application nos. 2691 of 1989, 5124 of 1990, 1556 of 1990 and 6352 of 1996 wherein it has been observed as under:

"The judgment of civil court is not binding on this court. The judgment given by the Civil Court is binding in between that person and the State Government and rightly the benefit has been given to that person. However, the learned counsel for the respondents have failed to produce on the record of these Special Civil Applications that the service condition, the age of retirement of 60 years was not there of the employees of the ex-Junagadh State. The learned counsel for the respondents has also failed to produce on that record any evidence to show that the service condition of the servants of the ex-Junagadh State has been changed with prior approval of the Central Government. Out of these four petitions, in two petitions, reply to the special civil application has not been filed. So far as two other special civil applications are concerned, reply has been filed and therein only defence has been taken that those petitions have given in writing to the respondents, an undertaking, to be governed by Bombay Civil Service Rules, 1959. I find that those two petitioners have given undertaking in writing to be governed by Bombay Civil Service Rules. However, in the reply, it is not the case of the respondents that their service conditions have been changed with prior approval of the Central Government. Nothing has been stated also so far as the case of Shri T.K.Budhecha is concerned. "

While disposing of those petitions, this court has passed the following order :

"In the result, these Special Civil Applications are disposed of in the terms that these petitions be cosnidered as representations of the petitions by the Chief Secretary of the State of Gujarat and he may place the same for consideration and decision of the high power committee to be constituted under his Chairmanship with three other members, i.e. Secretary, Finance Department, Secretary, Home Department and Secretary, Law Department. The matters are to be decided by the said comittee within a period of three months from the date of receipt of writ of this order. If the petitions or any of the petitioners desire opportunity of personal hearing, it may be afforded accordingly. Where the claim of the petitioners is acceptable, they shall be entitled for all consequential benefits which are to be determined and paid to them within two months next together with interest thereon @ 12% p.a. from the due date. Where the claim of the petitioners are not acceptable, a reasoned order be passed and a copy of the same be sent to the petitioners by by registered post A.D. In case where the order of the high power committee goes adverse to the petitioners, liberty is granted to them for revival of these special civil applications. Rule and Special Civil Applications stand disposed of accordingly with no order as to costs."

4. On the basis of the judgment dated 20th January, 2001 passed by this Court (Coram: S.K.Keshote, J), I think it proper to dispose of these petitions in the terms that the present petitions be considered as representations of the petitioners by the Chief Secretary of the State of Gujarat. The Chief Secretary may place the same for consideration and decision of the high power committee to be constituted under his chairmanship. If any of the petitioners desires hearing, he may be afforded an opportunity of personal hearing and the matter will be decided in terms of the judgment dated 20.1.2001. Accordingly, these petitions stand disposed of finally with no order as to costs. Rule is discharged in each petition.

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